

# **INITIAL STATEMENT OF REASONS “MECHANICAL RESTRAINT POLICY FOR THE BOARD OF PAROLE HEARINGS”**

**California Code of Regulations, Title 15, § 2035**

## **MECHANICAL RESTRAINTS**

**RN 06-02**

### **CIRCUMSTANCES THAT THIS REGULATORY ACTION IS INTENDED TO ADDRESS**

Government Code § 12838.4 vests the Board of Parole Hearings with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the Board of Prison Terms, Narcotic Addict Evaluation Authority, and Youthful Offender Parole Board, which no longer exist.

Penal Code § 3052 vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code § 5076.2 authorizes the Board to promulgate, maintain, publish, and make available to the general public a compendium of its rules and regulations.

The original parole hearing restraint policy formulated by the Board and the former Department of Corrections (now the California Department of Corrections and Rehabilitation) (CDCR) acknowledged the special security needs inherent in Board hearings and that the Commissioner or Deputy Commissioner presiding over the hearing must have the ability to have the inmate or parolee in restraints. The purpose of Administrative Directive AD 01/01R was to acknowledge that policy and also make a minor exception for inmates and parolees with disabilities pursuant to a federal court permanent injunction issued in *Armstrong v. Schwarzenegger*, U.S.D.C. N. Dist. Cal. Case No. C94-2307 CW. The permanent injunction in *Armstrong v. Schwarzenegger* requires that adult prisoners and parolees with specified disabilities be afforded the opportunity to effectively participate in parole proceedings while maintaining adequate security of facilities and safety of persons. For example, accommodations to restraints must be provided for inmates and parolees who use American Sign Language as their primary method of communication except when deemed necessary after individualized review and prior approval by the Executive Officer or designee.

CDCR has a general policy concerning use of restraints—CCR §3268.2. However, the court held in *In re Martin*, Sacramento County Superior Court, Case No. 03F10102, that §3268.2 did not apply to Board hearings. Thus, the Board must adopt its own regulations providing an adult restraint policy. This regulatory adoption must be done on an emergency basis since having the full policy effective immediately is necessary to protect the safety of Commissioners, Deputy Commissioners, and others attending the hearings.

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### **NECESSITY FOR THE PROPOSED ACTION**

#### **New Section 2035. Mechanical Restraint Policy for Board of Parole Hearings.**

The intent of new §2035 is to promulgate a regulation containing the provisions in the former Administrative Directive and thus continue that policy in a manner consistent with the *Martin* court decision and the permanent injunction issued in *Armstrong v. Schwarzenegger*. There is no intent to increase the level of security that has been historically provided at Board hearings.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The Board did not rely on any technical, theoretical, or empirical studies in consideration of the proposed action.

### **ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY**

The Board must determine that no reasonable alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

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**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT  
WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The subject of this regulatory action has a direct effect on prisoners and parolees. Any impact on small business would be indirect and likely insignificant. The Board has not identified any alternatives that would lessen any adverse impact on small businesses.